

VICTORIO M. STEPHENS,)	
)	
Plaintiff(s),)	No. C 05-4972 TEH (PR)
)	
vs.)	ORDER OF DISMISSAL WITH
)	LEAVE TO AMEND
COUNTY OF SANTA CLARA, et al.,)	
)	
Defendant(s).)	
)	

DISCUSSION

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." *Id.* § 1915A(b). Pro se pleadings must be liberally construed, however. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
2 elements: (1) that a right secured by the Constitution or laws of the United States
3 was violated, and (2) that the alleged violation was committed by a person acting
4 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

5 To state a claim under Title II of the ADA, a plaintiff must allege four
6 essential elements: (1) that he is an individual with a disability; (2) that he is
7 otherwise qualified to participate in or receive the benefit of some public entity's
8 services, programs, or activities; (3) that he was either excluded from
9 participation in or denied the benefits of the public entity's services, programs or
10 activities, or was otherwise discriminated against by the public entity; and
11 (4) that such exclusion, denial of benefits, or discrimination was by reason of the
12 plaintiff's disability. Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002).

13 B. Legal Claims

14 Plaintiff alleges that he was injured while using the jail's physical therapy
15 equipment on August 13, 2005 and that he was not provided medical attention
16 until August 15, 2005. Plaintiff also alleges that he has not been provided
17 adequate medical care because he has been given incorrect medication and
18 physician-prescribed items such as orthopedic shoes have been delayed at times.
19 Plaintiff finally alleges that prison officials have not properly accommodated his
20 "left-side paralysis-gait instability" and "muscle weakness" disability.

21 The Constitution requires that prison officials provide all inmates with the
22 basic necessities of life such as food, clothing, shelter, sanitation, medical care
23 and personal safety. Farmer v. Brennan, 511 U.S. 825, 832 (1994). A prison
24 official violates this constitutional duty only if two requirements are met: (1) the
25 deprivation alleged must be, objectively, sufficiently serious, and (2) the prison
26 official possesses a sufficiently culpable state of mind. Id. at 834.

1 In prison-conditions cases, the necessary state of mind is one of deliberate
2 indifference. See id.(inmate safety); Estelle v. Gamble, 429 U.S. 97, 104 (1976)
3 (inmate health). A prison official cannot be held liable unless the standard for
4 criminal recklessness is met, i.e., the official must know of and disregard an
5 excessive risk to inmate health or safety. Farmer, 511 U.S. at 837. Neither
6 negligence nor gross negligence will constitute deliberate indifference. See id. at
7 835-36 & n.4; see also Estelle, 429 U.S. at 106 (establishing that deliberate
8 indifference requires more than negligence).

9 Plaintiff's allegations state no more than a claim for negligence or medical
10 malpractice not cognizable under § 1983. He will nonetheless be provided an
11 opportunity to amend and set forth additional facts possibly supporting a claim
12 for deliberate indifference. Plaintiff is reminded that he must also link each
13 defendant to his allegations of wrongdoing. Specifically, plaintiff must set forth
14 facts showing how each named defendant actually and proximately caused the
15 constitutional deprivations of which he complains. See Leer v. Murphy, 844 F.2d
16 628, 633-34 (9th Cir. 1988).

17 Plaintiff's allegations do not state a cognizable claim under the ADA
18 either. They are simply too conclusory. But again he will be afforded an
19 opportunity to set forth additional facts possibly supporting a claim under the
20 ADA. See Thompson, 295 F.3d at 895 (setting forth required elements for an
21 ADA claim).

22 CONCLUSION

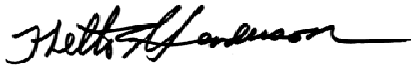
23 For the foregoing reasons, the complaint is dismissed with leave to amend,
24 as indicated above, within 30 days of this order. The pleading must be simple
25 and concise and must include the caption and civil case number used in this order
26 and the words FIRST AMENDED COMPLAINT on the first page. Failure to
27

1 file a proper amended complaint within the designated time will result in the
2 dismissal of this action.

3 Plaintiff is advised that the amended complaint will supersede the original
4 complaint and all other pleadings. Claims and defendants not included in the
5 amended complaint will not be considered by the court. See King v. Atiyeh, 814
6 F.2d 565, 567 (9th Cir. 1987).

7
8 SO ORDERED.

9
10 DATED: 03/06/06



THELTON E. HENDERSON
United States District Judge